UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

BBMB, INC., a Missouri Corporation,)	
d/b/a POTOSI LUMBAR COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:09CV1879 TIA
)	
PENNSYLVANIA LUMBERMENS)	
MUTUAL INSURANCE COMPANY,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on Defendant Pennsylvania Lumbermens Mutual Insurance Company's Motion for Lifting of Limited Stay and Selection of Umpire (Docket No. 24). All matters are pending before the undersigned United States Magistrate Judge, with the consent of the parties, pursuant to 28 U.S.C. § 636(c).

Defendant issued Policy No. 24-0005-01-04 to Plaintiff, BBMB, Inc., with an effective period of October 15, 2004 to October 15, 2005. (Deft Memo. Supp. Dismiss/Stay, Exh. A). After portions of Plaintiff's real property, buildings and inventories were damaged in a windstorm on October 18, 2004, Plaintiff made a claim for loss to property and other damage, and Defendant made payment on part of the claim. (Pltf's Petition). In the Petition filed on October 9, 2009, Plaintiff seeks payment for the full amount of the loss covered under the Insurance Contract. (Id.).

The policy provides that either party may demand an appraisal if the parties fail to agree on the value of the property or the amount of loss as follows:

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. Th two appraisers will select an umpire. If they

cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

(Deft Memo. Supp. Dismiss/Stay, Exh. B at 9). The policy also provides that no suit may be filed unless "[t]here has been full compliance with all of the terms of this Coverage Part." (Deft Memo. Supp. Dismiss/Stay Exh. C at 1).

Missouri courts have held that appraisal provisions in insurance policies are binding and enforceable. See, e.g., Lance v. Royal Ins. Co., 259 S.W. 535, 535 (Mo.Ct.App. 1924) ("A provision in an insurance policy for the amount of the loss to be ascertained by appraisers in case of disagreement in relation thereto is binding and enforceable, and must by complied with before a right of action accrues to the insured."); Williamson v. Liverpool & London & Globe Ins. Co., 122 F. 59, 62 (8th Cir. 1903) ("Our conclusion is that an insurance policy which authorizes the appraisers, in case of a disagreement as to the amount of the loss, to estimate and appraise the loss, empowers them to determine whether or not the loss is total, as well as to determine what the amount of the loss is in case they find it to be partial.").

Given the agreement in the Policy to submit to appraisal, the Court entered an Order on April 28, 2010, staying the instant cause until Defendant completed the appraisal process.

In the Motion for Lifting of Limited Stay and Selection of Umpire, Defendant apprises the Court that the appraiser made an offer of settlement to Plaintiff on May 4, 2010 and to date, Plaintiff has neither responded to the offer or rejected the offer of settlement. (Exh. A, Provencher Aff. at ¶ 2). Accordingly, the parties have been unable to reach a settlement. Thereafter the appraiser suggested potential umpires to Plaintiff to complete the appraisal process, but he has not received a

response from Plaintiff or its appraiser regarding the selection of the suggested umpires. (Id. at ¶ 3).

Plaintiff has not filed any opposition or responsive pleading to Defendant's Motion for Lifting Stay

and Selection of Umpire. Accordingly,

IT IS HEREBY ORDERED that Defendant Pennsylvania Lumbermens Mutual Insurance

Company's Motion for Lifting of Limited Stay and Selection of Umpire (Docket No. 24) is

GRANTED and the stay entered on April 28, 2010 is lifted for the limited purpose of selecting an

umpire.

IT IS FURTHER ORDERED that the Court designates the Honorable Stephen Limbaugh

as the umpire. The parties shall notify the Court within seven days of completion of the appraisal

process.

Dated this 2nd day of June, 2010.

/s/Terry I. Adelman
UNITED STATES MAGISTRATE JUDGE

- 3 -